

CHRISTINE A. VARNEY (*pro hac vice*)
cvarney@cravath.com
KATHERINE B. FORREST (*pro hac vice*)
kforrest@cravath.com
GARY A. BORNSTEIN (*pro hac vice*)
gbornstein@cravath.com
J. WESLEY EARNHARDT (*pro hac vice*)
wearnhardt@cravath.com
YONATAN EVEN (*pro hac vice*)
yeven@cravath.com
LAUREN A. MOSKOWITZ (*pro hac vice*)
lmoskowitz@cravath.com
M. BRENT BYARS (*pro hac vice*)

mbyars@cravath.com
CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

PAUL J. RIEHLE (SBN 115199)
paul.riehle@faegredrinker.com
FAEGRE DRINKER BIDDLE & REATH LLP
Four Embarcadero Center
San Francisco, California 94111
Telephone: (415) 591-7500
Facsimile: (415) 591-7510

*Attorneys for Plaintiff and Counter-defendant
Epic Games, Inc.*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-defendant,

v.

APPLE INC.,

Defendant, Counterclaimant.

No. 4:20-CV-05640-YGR-TSH

**DECLARATION OF YONATAN EVEN
IN SUPPORT OF EPIC GAMES, INC.'S
BRIEF REGARDING DR. SUSAN
ATHEY'S DIRECT WRITTEN
TESTIMONY**

The Honorable Yvonne Gonzalez Rogers

1 I, Yonatan Even, declare as follows:

2 1. I am an attorney licensed to practice in the State of New York and admitted to
3 appear before this Court *pro hac vice* in *Epic Games, Inc. v. Apple Inc.*, Case No. 4:20-cv-05640-
4 YGR. I am a partner at the law firm of Cravath, Swaine & Moore LLP and am one of the
5 attorneys representing Epic Games, Inc. (“Epic”) in the above-captioned action.
6

7 2. I submit this declaration in support of Epic’s Brief Regarding Dr. Susan Athey’s
8 Testimony Pursuant to Rules 702 and 703, as well as the Parties’ Stipulations. The contents of
9 this declaration are based on my personal knowledge. If called to be a witness, I could and would
10 testify competently thereto.

11 3. A true and correct copy of an email exchange between counsel for Apple and
12 counsel for Epic on May 16 and 17, 2021, is attached hereto as **Exhibit 1**.
13

14 4. A true and correct copy of a markup of Dr. Athey’s written direct testimony that
15 Apple’s counsel circulated to Epic counsel, highlighting in red the paragraphs that Apple purports
16 to object to, is attached hereto as **Exhibit 2**. The markup was included as an attachment to the
17 email from Apple counsel to Epic counsel set forth in Exhibit 1.

18 5. A true and correct copy of excerpts of the trial transcripts from May 11 and 12,
19 2021, is attached hereto as **Exhibit 3**.
20

21 6. A true and correct copy of excerpts of the trial transcript from May 17, 2021, is
22 attached hereto as **Exhibit 4**.

23 7. Attached as **Appendix A** is a chart that I prepared. The chart includes one row for
24 each paragraph of Dr. Athey’s written direct testimony that Apple purports to object to in whole
25 or in part. The second column of the chart indicates the paragraphs of Dr. Athey’s February 16,
26 2021 expert report in which she disclosed the substance of the testimony that Apple is now
27 challenging. As set forth in the chart, Dr. Athey disclosed the substance of every statement that
28

1 Apple now objects to in her expert report. The third column of the chart indicates the sources that
2 Dr. Athey cited in the sections of her report corresponding to the paragraphs of her written direct
3 testimony that Apple objects to. Review of the sources cited in that column show that Dr. Athey
4 identified and disclosed over 80 unique sources supporting the opinions expressed in the
5 paragraphs Apple objects to. The fourth column of the chart indicates admitted trial testimony
6 and exhibits that support Dr. Athey's opinions in her written direct testimony that Apple now
7 objects to.
8

9 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
10 and correct and that I executed this declaration on May 20, 2021, in Oakland, California.
11

12
13 /s/ Yonatan Even
14 Yonatan Even
15
16
17
18
19
20
21
22
23
24
25
26
27
28